



*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
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Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
WOODLAWN CONSTRUCTION COMPANY, INC.  
FOR  
CONSTRUCTION ALONG LOUDOUN COUNTY PARKWAY  
UNPERMITTED ACTIVITY**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Woodlawn Construction Company, Inc., regarding the construction project along Loudoun County Parkway, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "Facility" or "Site" means the utility construction site located along the VDOT right of way on Loudoun County Parkway, between Evergreen Ridge Drive, and Shellhorn Road, in Ashburn, Virginia, from which discharges of stormwater associated with construction activity occur.
10. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
11. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

15. "Registration Statement" means a registration statement for coverage under the 2019 Permit.
16. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
18. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
20. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
21. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
22. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VDOT" means the Virginia Department of Transportation.
26. "VPDES" means Virginia Pollutant Discharge Elimination System.
27. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting

from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.

28. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
29. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
30. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
31. "Woodlawn Construction Company, Inc." means Woodlawn Construction Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Woodlawn Construction Company, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Woodlawn Construction Company, Inc. operates the Site located in Loudoun County, Virginia, from which stormwater associated with construction activity is discharged.
2. The Site discharges stormwater associated with construction activities to unnamed tributaries of Broad Run.
3. Broad Run is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
4. Broad Run is located in the Potomac River Basin. The local unnamed tributaries of Broad Run have not been monitored nor assessed. Downstream segments of Broad Run are listed in DEQ's 305(b) report as impaired for aquatic life use and recreational use.
5. On June 24, 2019, DEQ stormwater compliance staff received a phone complaint from a Loudoun County citizen describing a lack of erosion and sediment control practices, and a lack of soil stabilization work where trench work was occurring at the Site.

6. On June 25, 2019, DEQ staff visited the Site and observed that linear utility installation land-disturbing activities greater than one acre have occurred at the Site in an area subject to stormwater runoff. Woodlawn Construction Company, Inc. had not registered for coverage under the 2014 Permit or the 2019 Permit, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site. Additionally, at the time of inspection, no erosion and sediment (“E&S”) controls were installed, and insufficient stabilization was observed at the Site.
7. Va. Code § 62.1-44.5(A) states: “Except in compliance with a certificate or permit issued by the Board or other Entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to ... [d]ischarge stormwater into state waters from ... land disturbing activities.”  
  
Va. Code § 62.1-44.15:34 states: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”  
  
Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.
8. On June 26, 2019, DEQ received a second complaint from a Loudoun County citizen describing sedimentation on a walking trail, appearing to originate from the construction at the Site.
9. On August 26, 2019, DEQ staff visited the Site with Loudoun County VSMP inspectors present. Representatives of Woodlawn Construction Company, Inc. were unable to demonstrate that the project was authorized under the 2019 Permit or any other permit or certificate for the discharge of stormwater from construction activities at the Site. VDOT Land Use Permits for the project were reviewed on site, which identified the permittee of such VDOT permits to be AMCS Networking Services LLC. Observations made during the inspection noted: land disturbance in the form of trench work at the Site without the appropriate 2019 Permit coverage; no SWPPP had been developed for the project; no E&S control plan had been developed or approved for the project; no stormwater management (“SM”) plan had been developed or approved for the project; no functional sediment trapping controls were present at the Site; inactive areas at final grade were observed denuded in multiple areas of the Site; and operable storm-sewer inlets along Loudoun County Parkway were not protected from sediment-laden discharges from the Site.
10. 9 VAC 25-870-54(G) states in part: “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site.

11. Va. Code § 62.1-44.15.55 states “Except as provided in § 62.1-44.15.56 for state agency and federal agency land-disturbing activities, no person shall engage in any land disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved.”  
  
9 VAC 25-870-54(A) states in part: “A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities....”  
  
9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”  
  
9 VAC 25-870-54(C) states: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.”
12. 9 VAC25-840(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”
13. 9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land disturbing activity and shall be made functional before upslope land disturbance takes place.”  
  
9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implanted during construction activities.”
14. 9 VAC25-840(10) states: “All storm sewer inlets that are made operable during construction shall be protected so that sediment laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”
15. Following this inspection, on August 29, 2019, DEQ issued an NOV (SW2019-08-NRO-0002) to AMCS Networking Services LLC, which detailed the observations noted in the August 26, 2019, inspection report.

16. Following the issuance of the NOV, DEQ met with representatives and associated contractors for AMCS Networking Services LLC to discuss compliance at the site on September 27, 2019, and on October 9, 2019.
17. On October 12, 2019, AMCS Networking Services LLC stated that Woodlawn Construction Company, Inc. had voluntarily stopped construction work at the Site pending appropriate permitting and remedial compliance work.
18. On October 15, 2019, DEQ compliance staff conducted a follow-up inspection of the Site to determine compliance. Construction did not appear to be ongoing, however the SWPPP, E&S control plans, and SM plans were unavailable. Additionally, the site was not covered under the appropriate 2019 Permit; no functional sediment trapping controls were in place; inactive construction areas at final grade were observed denuded; and operable storm sewer inlets along Loudoun County Parkway were not protected against sediment-laden discharges from the Site.
19. On October 16, 2019, VDOT gave permission for Woodlawn Construction Company, Inc. to perform remedial corrective actions on site with respect to erosion and sediment controls and stormwater management practices.
20. On December 17, 2019, AMCS Networking Services LLC initiated the Process for Early Dispute Resolution and a meeting was held on January 8, 2020. Following this meeting, DEQ found that the NOV it had issued on August 29, 2019, was not in error, and did not need to be amended or retracted. On January 14, 2020, Woodlawn Construction Company, Inc. submitted a letter to DEQ which requested that DEQ find Woodlawn to be the responsible party and subject of the NOV, rather than AMCS Networking Services LLC. In response to this letter, DEQ acknowledged the request from Woodlawn Construction Company, Inc. and issued an NOV (SW2020-01-NRO-0001) to Woodlawn Construction Company, Inc. on January 27, 2020, which cited the same violations as the August 29, 2019, NOV.
21. A meeting between Woodlawn Construction Company, Inc. and DEQ NRO was held on February 6, 2020, to discuss the NOV.
22. Woodlawn Construction Company, Inc. first submitted a permit application to Loudoun County on December 24, 2019, and obtained VSMP authority approval to begin land disturbance on April 20, 2020. On April 20, 2020, DEQ issued Woodlawn Construction Company, Inc. coverage under the 2019 Permit, assigning it registration number VAR10N847. A SWPPP was prepared and submitted with the application, and it included an E&S control plan and SM plan approved by Loudoun County.
23. The Department has not issued coverage under any permit or certificate to Woodlawn Construction Company, Inc. other than under the 2019 Permit.

24. Based on the results of the June 25, 2019, August 26, 2019, and October 15, 2019, inspections and subsequent correspondence, the Board concludes that Woodlawn Construction Company, Inc. violated:

- a. Va. Code § 62.1-44.5(A); Va. Code § 62.1-44.15:34; Va. Code § 62.1-44.15.55;
- b. 9 VAC 25-870-54(A); 9 VAC 25-870-54(B); 9 VAC 25-870-54(C); 9 VAC 25-870-54(G);
- c. 9 VAC25-840(1); 9 VAC 25-840-40(4); and 9 VAC25-840(10), as described in paragraphs C(1) through C(23) of this Order.

25. Woodlawn Construction Company, Inc. has obtained 2019 Permit coverage and Loudoun County has verified that the violations as described in paragraph C(24), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Woodlawn Construction Company, Inc., and Woodlawn Construction Company, Inc. agrees to pay a civil charge of \$31,875 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Woodlawn Construction Company, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Woodlawn Construction Company, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Woodlawn Construction Company, Inc. for good cause shown by Woodlawn Construction Company, Inc., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.



2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Woodlawn Construction Company, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Woodlawn Construction Company, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Woodlawn Construction Company, Inc. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Woodlawn Construction Company, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Woodlawn Construction Company, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Woodlawn Construction Company, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Woodlawn Construction Company, Inc. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Woodlawn Construction Company, Inc. Nevertheless, Woodlawn Construction Company, Inc. agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Woodlawn Construction Company, Inc. has completed all of the requirements of the Order;
  - b. Woodlawn Construction Company, Inc. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Woodlawn Construction Company, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Woodlawn Construction Company, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Woodlawn Construction Company, Inc. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Woodlawn Construction Company, Inc. certifies that he or she is a responsible official **[or officer]** authorized to enter into the terms and conditions of this Order and to execute and legally bind Woodlawn Construction Company, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Woodlawn Construction Company, Inc.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Woodlawn Construction Company, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14<sup>th</sup> day of September, 2020.



Thomas Faha, Regional Director  
Department of Environmental Quality

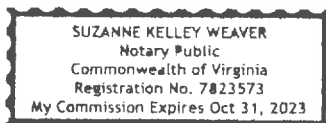
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Woodlawn Construction Company, Inc. voluntarily agrees to the issuance of this Order.

Date: July 1, 2020 By: Robert Payne VP OPERATIONS  
(Person) (Title)  
Woodlawn Construction Company, Inc.

Commonwealth of Virginia  
City/County of Henrico

The foregoing document was signed and acknowledged before me this 1<sup>st</sup> day of  
July, 2020, by Robert Payne who is  
VP OPERATIONS of Woodlawn Construction Company, Inc., on behalf of the  
corporation.



Suzanne Kelley Weaver  
Notary Public  
782 3573  
Registration No.

My commission expires: 10-31-23

Notary seal: